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MAY 11 2017 UNITED STATES COURT OF APPEALS  
FOR THE SIXTH COURT

DEBORAH S. HUNT, Clerk

Lee Craft

(Name of Petitioner)

v.

Philips Electronics North America

(Name of Respondent)

17-1544  
Petition for Review

Agency No. N/A

I Lee Craft hereby petition to the court for review of the Order of the National Labor Relation Board entered on the 13th day of June, 2013.

Lee Craft Pro-Se  
Attorney for Petitioner(s)

Address: 7467 Nunn Cove  
Memphis TN 38235

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PETITION TO REVIEW

On June 13, 2013 Administrative Law Judge Margaret G. Brakebusch was biased and refused to hold Philips Electronics North America Corporation accountable for my wrongful termination.

I want the board to know I was fired for showing my write up, which is an unlawful reason for termination and telling my co-workers in pre-shift meetings we don't have to be treated this way. If we don't unite against the bullying by management it will only get worse. I PRAY that the board will look at my case transcript, and the cross examination by Mr. Bill Hearne you will know they perjured themselves. I was not fired for my performance. I want the board to know that management was telling lies throughout my trial. I read the judge's decision (the board's established policy is not to overrule an administrative decision unless clear preponderance of all the relevant evidence convinces us that they are incorrect).

I want the board to know that my trial was a disgrace to the judicial system.

I was fired for showing my write up? My trial was based on lies trying to destroy my character, to discredit me.

I want the board to know that Administrative Law Judge Margaret G. Brakebusch, the facts in her decision are incorrect. Judge Margaret G. Brakebusch, cherry picked from my trial and the hearsay from Sherry McMurrian's testimony. The Judge didn't consider Mr. Bill Hearne when he cross examined Sherry McMurrian and caught her lying under oath.

Here is what Judge Brakebusch said were facts: for several years during his tenure with respondent, he received numerous oral and written warnings.

1. I was hired February 2003, from 2003 till 2010 not one oral or written write up! Please look at EXH.26-CA085613.R Exh 1-19 you will see all my write ups were in 2011. I was written up 6 times in one day. They were harassing me.
2. Demotion for performance issue. I tried to demote myself. I got tired of getting written up for people in my department. I could ask them to do their job but I couldn't make them. They would tell Sherry McMurrian, then they would do as they pleased (p.243-244) and (p.259-261).
3. Misconduct, including repeatedly harassing and intimidating Kim Coleman. I never talked to Kim unless somebody was present, and I had no conduct issues. Sherry Gray gave testimony about Kim Coleman violating company policy by using her cell phone while on the work floor that's the reason why Kim told Sherry McMurrian I was harassing her. Sherry McMurrian gave testimony saying when I said kiss butt that was intimidating language, look at (p.269-270).

I was fired for showing my write up!

Sherry McMurrian committed perjury when she said that Philips Lightning does not have a written or unwritten policy which prohibits employees from discussing disciplinary notices. Sherry McMurrian submitted R-14 into evidence and it clearly shows there was an unwritten policy which prohibits employees from discussing disciplinary notices.

Sherry McMurrian gave testimony that Philips Lightning is free of intimidating, threatening behavior or statements, physical abuse or attack, harassment by any means, including person, telephone, or electronically, vandalism, or carrying a weapon (p.173).

Kim Coleman gives testimony that she broke these rules (p-.375-377).

To the board, all I ask for is justice! The court room is a place where the TRUTH should mean something. I lost my job for showing my write up, not for my work performance.

1 his work quality?

2 A. That's correct. And we made comments there too in the  
3 other areas where he was just meeting expectations, what he  
4 needed to do to improve in those areas.

5 Q. But he didn't -- he wasn't shown as needing improvement  
6 in four of those five, right?

7 A. His overall evaluation score was Improvement Needed.

8 Q. That's not the question I asked. I asked in four of  
9 the five metrics, he met or exceeded expectations, correct?

10 A. He met the expectations.

11 Q. So that's a yes to my question?

12 In four of the five, he met or exceeded expectations,  
13 correct?

14 A. No, he did not meet or exceed. He met.

15 Q. I said met or exceeded, combined, four of the five.  
16 One of them he Exceeds Expectations. Three he Meets  
17 Expectations, correct?

18 A. That's correct.

19 Q. Now, around this time of this performance review,  
20 actually a little bit before that, Mr. Craft had actually  
21 asked to return to the material handler position, hadn't  
22 he?

23 A. Yes.

24 Q. So he had tried to go back, tried to demote himself  
25 from the lead position, hadn't he?

1 A. That's correct.

2 Q. And he decided to stay in the lead position because of  
3 who?

4 A. Because I had a discussion with him that I felt like he  
5 needed to give it more time, that he needed to work with  
6 others and train and that, you know, that one month on the  
7 job, he really couldn't tell whether he was going to be  
8 able to do it or not.

9 Q. That was in February of 2011 that he asked to go back,  
10 correct?

11 A. No, it was before then.

12 Q. And so just going through, there were Respondent's  
13 Exhibit 2, Exhibit 3, Exhibit 4, and Exhibit 5. Now's  
14 there's five counseling forms in total here, I believe,  
15 correct?

16 A. Uh-huh.

17 Q. Respondent's 4 consists of three different ones that  
18 were issued on the same day. I'm sorry. There will be 1,  
19 2, 3, 4, 5, 6 in total, correct?

20 A. I found six.

21 Q. Yes. And just looking at them, Respondent's 2 from  
22 February 9, 2011, this was a verbal warning for  
23 performance, correct?

24 A. That's correct.

25 Q. And then April 14, 2011, another verbal warning for

1 Q. Now, at that time Mr. Craft was a lead, right?

2 A. That's correct.

3 Q. Ms. Coleman said she was listening to her radio on her  
4 cell phone?

5 A. That's correct.

6 Q. Are employees allowed to use their cell phones to  
7 listen to the radio during work time?

8 A. No.

9 Q. So she was violating Company policy, right?

10 A. That's correct.

11 Q. And Mr. Craft is the lead. He's the one that would be  
12 in the department to observe these issues, correct?

13 A. That's right.

14 Q. So according to her, she's claiming that Mr. Craft  
15 tried to have her escorted from the building. But she  
16 ended up in Mr. Blinstrup's office, right?

17 A. That's right.

18 Q. Was she disciplined for that?

19 A. Gene told her she could not use her phone to listen to  
20 music on the floor.

21 Q. And she was issued a -- there was a -- any written  
22 documentation on that?

23 A. He gave her a verbal warning that was not documented.

24 Q. So when that happened, Mr. Craft was actually correct  
25 about trying to stop her from violating Company policy,

1 right?

2 A. He was incorrect about trying to have her escorted from  
3 the building because a team lead does not have any kind of  
4 disciplinary authorization.

5 Q. That's according to Ms. Coleman that he asked her to --  
6 he wanted her escorted from the building. That's what  
7 Ms. Coleman said.

8 A. I was called down there to Gene's office when that  
9 occurred.

10 Q. And Ms. Coleman said he wanted her escorted from the  
11 building, correct?

12 A. The guard was trying to escort her from the building,  
13 and he called me and I told him to take her to Gene's  
14 office.

15 Q. So during that period of time when Mr. Craft was a  
16 lead, he was a lead employee over Ms. Coleman, right?

17 A. Yes.

18 Q. So if he observed her talking on her cell phone during  
19 work time, he could ask her to -- he could let her know  
20 that this was a problem, that she was violating Company  
21 policy and she needed to stop.

22 A. Well, he should go to the supervisor.

23 Q. And otherwise if she was wasting time or not doing  
24 work, he could talk with her about that?

25 A. No, he had no authority for any discipline. It was

1 just the direction of the work. And if there was a  
2 problem, then he should talk to the supervisor and have the  
3 supervisor --

4 Q. But if he saw her standing there, would it be  
5 acceptable for a lead to say, "Hey, you need to get to  
6 work"? Is that an acceptable thing?

7 A. Yeah.

8 Q. Or, "Hey, you need to get off your cell phone and get  
9 back to work." The lead could do that -- just a comment?

10 A. Yeah.

11 Q. There's some mention in the document about Mr. Craft.  
12 Allegedly she claimed -- Ms. Coleman claimed -- that he was  
13 using a recording device to try to record her conversations  
14 when she was on the phone?

15 A. Uh-huh.

16 Q. You investigated that, right?

17 A. Gerak Guyot, my ops manager, did.

18 Q. And this recording device, what was it?

19 A. It was a PlayStation, a portable PlayStation.

20 Q. Okay, it wasn't really a recording device. It was  
21 handheld game system, right?

22 A. Right, that will record.

23 Q. Well, did you find recordings of Ms. Coleman on there?

24 A. No, my ops manager just went and got it and told him he  
25 didn't need to have it on the floor. That it was not



1 Q. I'll have you look at this statement provided by  
2 Mr. Edwards. Does that document reflect that Mr. Edwards  
3 identifies the conversation with Mr. Craft as occurring at  
4 a pre-shift meeting?

5 A. This was right after a pre-shift meeting because that's  
6 where all three of them would have been together.

7 Q. After a pre-shift meeting. It wasn't during the pre-  
8 shift meeting, correct?

9 A. Correct.

10 Q. So that statement, is that the statement that you  
11 perceive as negative, intimidating, and demoralizing to the  
12 employees' environment?

13 A. Yeah, that's, you know, why would he make that comment?

14 Q. That's an unacceptable comment?

15 A. That is negative. That he's saying people are --

16 Q. He shouldn't be discussing that --

17 MR. MILLER: Would you allow her to finish, please?

18 MR. HEARNE: I'm sorry.

19 THE WITNESS: Yeah, what I was saying is that he's  
20 saying people have to kiss butt and that that was not  
21 very -- that was not positive.

22 Q. BY MR. HEARNE: So employees shouldn't be talking that  
23 way to other employees?

24 A. I didn't say that. I just said that he was going  
25 around saying, you know, he can say things in a more

1 positive manner I would think. Take matters into his own  
2 hands, stop right now, kiss butt, and move up the -- you  
3 know, that that was negative.

4 I spoke to him and he told me what he was trying to get  
5 across. And I said, well, then maybe you need to, you  
6 know, communicate in a different way because that's not how  
7 it's coming across to the employees. They feel like you're  
8 negative talking. You know, I told him his communication  
9 wasn't clear. Because if that's what he was trying to get  
10 across, it wasn't coming across that way.

11 Q. Mr. Edwards, he's an employee, right?

12 A. Yes, he's a team lead.

13 Q. He's a team lead. And Mr. Craft was expressing to  
14 Mr. Edwards issues he had with what he perceived as how  
15 employees were promoted?

16 A. I don't know what it was about.

17 Q. But this was part of the statements where he is working  
18 against the Company and were threatening in nature?

19 A. Uh-huh.

20 THE REPORTER: Is that a yes?

21 THE WITNESS: Yes.

22 Q. BY MR. HEARNE: Third paragraph, you mentioned the  
23 obsessive behavior directed to two female employees, but  
24 you only mentioned one female employee. Who is the other  
25 female employee?

January 24, 2012

Two employees reported directly to me that Lee Craft was showing his written disciplinary action form to other employees on the floor. These employees are aware that Disciplinary action forms are confidential information and should not be shared on the warehouse floor, at anytime, much especially during working hours. Kim Coleman and Thelma Halbert reported the incident directly to me. They told me what was in the write up, which confirmed he had to be showing the other employees the form. Kim Coleman reported she heard other employees (who she named but do not want to be named in this statement for fear of his retaliatory nature) he was stating "the write up was due to Kim Coleman filing harassment charges against him.

Kim Coleman herself overheard Lee Craft telling employees in the ballast area and that he was "untouchable", and that management had done him a favor by moving him out of the ballast area and that he would not have to pick up the heavy ballast anymore and that anyone can load", and that he is in heaven now. Kim stated he was purposely showing the write-up which he knows is confidential information so it would get back to her like she was the blame. He was talking loud enough for everyone in that area to hear him. He drove down there on the fork-lift he was supposed to be using in the Professional area and should not have been in this area period.

Thelma Halbert knew every word written on the disciplinary form and stated Lee had been showing it off to other people in the warehouse. Thelma heard a co-worker (who does not want their name involved as long as Lee is here in the building) stating that "I am glad I was moved, don't have to worry about lifting ballast and [who can't load trucks]. He was showing his write up on the floor and one Adecco employee; Marcus Bernard stated "something is wrong with that man; I used to work with him somewhere else and he was a problem then and he still a problem". Marcus told him he needed to "chill out". Marcus told Thelma that Lee was fired from another job for the same problems.

Joe Odum, Lee's present supervisor, approached one of the other employees (Fred Smith) that had been named as seeing the disciplinary form. Fred confirmed Lee showed him the form out on the floor during working hours when Fred was working down in the Professional area. Fred also said he knew Lee Craft had shown the form to others on the warehouse floor. Fred asked Joe, "Why would he be showing that to me?"

January 25, 2012

Signed,

Sherry McMurrin

Thelma Halbert

*Sherry McMurrin* 1/25/2012

Fred Smith 1/25

Kim Coleman

*Kim Coleman* 1/25

Joe Odum

*Joe Odum* 1/25

Gerak Guyot

*Gerak Guyot* 1/25/12

R-14

1 Q. And this applies to the RDC in Memphis?

2 A. That's correct.

3 Q. When I say this, I'm holding up 2(c).

4 Okay, if you'll just look at 2(d), does that also apply  
5 to the Memphis facility?

6 A. Yes, that is correct.

7 Q. And what does that -- it's entitled Violence Free, but  
8 what does that address?

9 A. It's the policy to ensure that we provide a safe  
10 working environment that's violence free.

11 Q. Well, it seems to say more than that.

12 A. Well, it's free of intimidating, threatening behavior  
13 or statements, physical abuse or attack, harassment by any  
14 means, including person, telephone, or electronically,  
15 vandalism, or carrying a weapon.

16 Q. Okay. Now, if you're going to change a policy, is  
17 there some sort of a approval process that it has to go  
18 through?

19 A. Yes, it's fed through HR, and then HR would review it  
20 with Legal before it became part of our handbook.

21 Q. Okay. And if you do make a change, do you know how  
22 it's communicated to the employees?

23 A. Yes, we go over it in meetings, and then we have it  
24 added as addendum to the handbook.

25 Q. Okay.

- 1 A. But it's communicated verbally with employees.
- 2 Q. All right. Does Philips have a written policy which
- 3 prohibits employees from discussing disciplinary notices?
- 4 A. No.
- 5 Q. Do they have an unwritten policy which prohibits
- 6 employees from discussing disciplinary notices?
- 7 A. No.
- 8 Q. You know Lee Craft?
- 9 A. Yes, I do.
- 10 Q. And how do you know him?
- 11 A. From his affiliation with Philips.
- 12 Q. Do you know him outside the workplace?
- 13 A. No.
- 14 Q. Do you know offhand approximately when he was hired?
- 15 A. February of 2003.
- 16 Q. Do you know what position he was hired into?
- 17 A. Material handler.
- 18 Q. What does a material handler do basically?
- 19 A. It's the order picker. They operate equipment. They
- 20 pick orders. They put away product. It's the warehouse
- 21 role.
- 22 Q. What positions do you have at that facility that are
- 23 "the hourly work force"? Can you tell us quickly?
- 24 A. Yeah, we only have really two roles, and that's
- 25 warehouse and then warehouse lead. And that's operators,

1 Q. So but you had seen them before?

2 A. Yes.

3 Q. So you know what a PlayStation Portable looks like?

4 A. Yes.

5 Q. They usually actually has like a PlayStation Portable,  
6 it's printed on the front of it, right?

7 A. Yes.

8 Q. It says PSP?

9 A. Yes.

10 Q. But you're saying the one that you looked at wasn't a  
11 PSP?

12 A. Well, to me it didn't, it didn't. So that's why I'm  
13 saying to me it didn't.

14 Q. And this was the same item you said Mr. Craft had when  
15 he was looking into the ballast, the ballast scrap?

16 A. Yes, uh-huh.

17 Q. This same device that Mr. Guyot looked at?

18 A. Yes.

19 Q. During the time you've worked for Philips, have you  
20 ever been disciplined?

21 A. Yes.

22 Q. How many times?

23 A. I can't recall.

24 Q. Is it one, two, three, more than three?

25 A. Several times.

- 1 Q. Several times. Were you ever suspended?
- 2 A. No.
- 3 Q. You've never been suspended?
- 4 A. Yes, I did.
- 5 Q. You did?
- 6 A. Yes.
- 7 Q. And you were suspended for hitting an employee, right?
- 8 A. Yes.
- 9 Q. This was on the work floor?
- 10 A. Yes.
- 11 Q. During work time?
- 12 A. Yes.
- 13 Q. You punched this employee?
- 14 A. Well, he punched me first. He hit me first.
- 15 Q. And you hit him?
- 16 A. And I was defending myself.
- 17 Q. But you hit him?
- 18 A. Yes.
- 19 Q. How many times?
- 20 A. One, because I was sitting down when he came in my
- 21 face. I was sitting down in the break room.
- 22 Q. How many days were you suspended?
- 23 A. Three.
- 24 Q. And that's for violating the workplace violence policy?
- 25 A. Yes.

1 Q. The other times you were disciplined, what were you  
2 disciplined for?

3 A. Being late and -- being late and argument.

4 Q. An argument with who?

5 A. A co-worker.

6 Q. And who was this co-worker?

7 A. I think it was Tamara Hamilton.

8 Q. Was she a lead?

9 A. No, she was a regular worker.

10 Q. Well, what was this argument?

11 A. It was over something. It was real petty, something so  
12 petty.

13 Q. But why were you -- if it was just a petty argument,  
14 why were you disciplined?

15 A. Because there was something that we both shouldn't have  
16 been doing, arguing in the workplace. And we let it get  
17 out of hand.

18 Q. Did you use any curse words when you were arguing with  
19 her? You were cursing at her, weren't you?

20 A. I probably was. I can't -- yes, that was over in  
21 Mendenhall, and I probably was.

22 Q. I want to ask you about a situation where you -- it was  
23 around December 27th, 2011. You observed a conversation  
24 between Lee Craft and Antonio Edwards, who was a lead?

25 A. Yes.



9017951585

Memphis RDC

02:54:18 p.m. 08-21-2012

1/5

# Regional Distribution Center

## EMPLOYEE COUNSELING FORM

Employee Name: Lee Craft Date of Notice: 01/25/2012  
 Employee #: 10242701

### Type of Violation

☐ Inappropriate Behavior ☒ Insubordination  
☐ Unsatisfactory Performance ☐ Other: Termination  
☐ Willful Damage to Company Property  
☐ Violation of Company Policy/Procedures

### Description of Violation

Date of Incident: 01/24/2012 Time: \_\_\_\_\_

#### Description

Lee Craft is being terminated effective immediately due to disrupting the operation and sharing confidential documentation and information during working hours and continues to use intimidating language towards management. Lee received a final written disciplinary notice warning against these exact behaviors on 1/20/2012. Lee requested a copy of the write up and was informed of the confidentiality of the discussion and form during this meeting.

### Employee Statement

Employee Description of Incident: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### Action To Be Taken

☐ Verbal Counseling ☐ Verbal Warning ☐ Written Warning ☐ Suspension ☒ Discharge

Action to be Taken: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Employee REFUSED to sign (T.O.) HAD NO COMMENTS (T.O.)*  
 I have read and understand this Employee Counseling Form.

Employee Signature: \_\_\_\_\_ Date: 1/1  
 Supervisor Signature: [Signature] Date: 1/25/2012  
 DC Manager Signature: [Signature] Date: 1/25/2012

[Signature] 1/25/12

RDC Standardized Employee Counseling Form Lee Craft\_Termination 01252012

GC Exhibit 7

A COPY OF THE MOTION AND ATTACHED EVIDENCE WAS  
SUBMITTED TO THE FOLLOWING PARTIES BY FEDERAL  
EXPRESS ON May 8, 2017

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MAY 11 2017

DEBORAH S. HUNT, Clerk

A handwritten signature in blue ink, reading "Lee Craft", is written over a horizontal line.

Lee Craft

7467 Nunn Cv.

Memphis TN 38125

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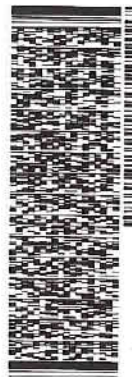
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